

## **REMARKS**

The present application is directed to an apparatus and method for processing a fluid sample. Claims 1-17 and 25-47 are currently pending. Claims 18-24 were withdrawn without prejudice as directed to a non-elected invention and are canceled in this paper. Claims 1, 25, 36 and 40 have been amended. Support for the amendments can be found in, e.g., paras. [0050] and [0055] of the specification (paragraph numbers refer to the Patent Application Publication No. 2006/0281094). No new matter has been added.

### ***Rejections Under 35 U.S.C. § 102***

Claims 1-6, 8, 9 and 11-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Koike *et al.* (US 5,305,650, "Koike"). Applicants respectfully traverse in view of the above amendments and following remarks.

Koike describes an automatic preparation apparatus having a rotatable platform 15 containing various containers, a probe needle 26 and an arm 33 which can move the probe needle 26 relative to the containers.

Claim 1, as amended, includes the limitation that the functional component is releasably stored on the platform. This is not the case in Koike, where both Figures 1 and 2 show the probe needle 26a housed separately from the rotatable platform. In fact, the probe needle 26a is attached to a micro-syringe pump—thus, it would not be possible to house the probe needle on a rotating platform without causing entanglement.

The arrangement claimed in amended Claim 1, in which the first functional component is releasably stored on the platform and clarifies that the functional component is stored and ready for use on the platform, has the advantage that both reagents and functional components required for the sample preparation are housed on the platform, allowing the platform to be tailored to any particular sample preparation.

For at least the reasons discussed above, and possibly for other reasons, applicants submit that independent Claim 1, as amended, is not anticipated by Koike and applicants request that the rejection of this claim under 35 U.S.C. § 102(b) be withdrawn.

Claims 2-6, 8, 9, and 11-13 are dependent on Claim 1. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

Claims 36-38 are rejected under 35 U.S.C. § 102(a), (b) and/or (e) as being anticipated by Clark *et al.* (WO 01/11374, "Clark") and Squirrel (WO 2002/087762), and Claims 40-47 are rejected under 35 U.S.C. § 102(a) and (e) as being anticipated by Squirrel. Applicants respectfully traverse in view of the above amendments and following remarks.

Claim 36 has been amended to include a recitation of a functional component and to clarify that the engagement is between a feature of the functional component and an edge of the hole. Claim 40 has been amended to include a recitation of "one or more further chambers containing predisposed nucleic acid amplification reaction processing reagents."

Clark is described in prior Responses filed in this application. Clark does not disclose any engagement between a feature of a functional component and an edge of the hole. Instead, the piston is housed within a well and supported on the upper seal of the well by adhesion. There is no engagement between an edge of the hole and a feature of the functional component, as required by amended Claim 36.

Moreover, Squirrel discloses a bioluminescence system. Page 12, lines 32-36 describes the final chamber in a series of three, forming a disposable unit for carrying out AK-phage assays for detecting bacterial contamination of food. Page 17, lines 3-6 describes the final stage in which a bioluminescent signal is produced, showing the amount of ATP present. Squirrel thus does not include chambers containing predisposed nucleic acid amplification reaction processing reagents as required by amended independent Claims 36 and 40.

For at least the reasons discussed above, and possibly for other reasons, applicants submit that independent Claims 36 and 40, as amended, are not anticipated by Clark or Squirrel and applicants request that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claims 37, 38 and 41-47 are dependent on Claims 36 or 40. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

***Rejections Under 35 U.S.C. § 103***

Claims 1, 5-7, 8, 10, 15-17, 25-27, 30-38 and 40-47 are rejected under 35 U.S.C. § 103(a) as obvious over Koike in view of Jang (USPGPUB 20030082565). Applicants respectfully traverse in view of the above amendments and following remarks.

As explained above, independent Claims 1, 25 and 40 have been amended to recite that a functional component is releasably stored on the platform, and Claim 36 has been amended to include a recitation of a functional component and to clarify that the engagement is between a feature of the functional component and an edge of the hole.

For the reasons discussed above, applicants submit that these limitations are not disclosed or suggested in Koike. Moreover, Jang does not cure the deficiencies of Koike. Accordingly, applicants submit that the combination of Koike and Jang does not render independent Claims 1, 25, 36 and 40 obvious under 35 U.S.C. § 103(a), and applicants respectfully request that the rejections of these claims be withdrawn.

Claims 5-7, 8, 10, 15-17, 26, 27, 30-35, 37, 38 and 41-47 are dependent on Claims 1, 25, 36 or 40. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

Claims 1 and 14 are rejected under 35 U.S.C. § 103(a) as obvious over Koike in view of Lee (WO 98/24548). Applicants respectfully traverse in view of the above amendments and following remarks.

As explained above, independent Claim 1 has been amended to recite that a functional component is releasably stored on the platform.

For the reasons discussed above, applicants submit that this limitations is not disclosed or suggested in Koike. Moreover, Lee does not cure the deficiencies of Koike. Accordingly, applicants submit that the combination of Koike and Lee does not render

independent Claim 1 obvious under 35 U.S.C. § 103(a), and applicants respectfully request that the rejection of this claim be withdrawn.

Claim 14 is dependent on Claim 1, and applicants thus submit that this claim is allowable as dependent on an allowable independent claim and request that its rejection be withdrawn.

Claims 25, 27-29, 36 and 39 are rejected under 35 U.S.C. § 103(a) as obvious over Koike in view of Jang as applied to Claims 25 and 36 and further in view of Heath *et al.* (USPGPUB 2004/0092731, "Heath"). Applicants respectfully traverse in view of the above amendments and following remarks.

As explained above, independent Claims 25 and 36 are believed to be allowable over the combination of Koike and Jang. Moreover, Heath does not cure the deficiencies thereof. Accordingly, applicants submit that the combination of Koike, Jang and Heath does not render independent Claims 25 and 36 obvious under 35 U.S.C. § 103(a), and applicants respectfully request that the rejections of these claims be withdrawn.

27-29 and 39 are dependent on Claims 25 or 36. Applicants thus submit that these claims are allowable as dependent on allowable independent claims and request that their rejection be withdrawn.

**CONCLUSION**

The foregoing is submitted as a full and complete response to the Office Action mailed August 26, 2009.

Applicants assert that the claims are in condition for allowance and respectfully request that the application be passed to issuance. If the Examiner believes that any informalities remain in the case that may be corrected by Examiner's amendment, or that there are any other issues which can be resolved by a telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is respectfully solicited.

No additional fees are believed due; however the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account Number 11-0855.

Respectfully submitted,

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